

BEFORE THE HUMAN RIGHTS COMMISSION  
OF THE STATE OF MONTANA

JAMES HORINEK,  
Charging Party,

-v-

TITAN MACHINERY,  
Respondent,

HRB Case # 0111014989

ORDER  
FINAL AGENCY DECISION

Charging Party, James Horinek (Horinek), filed a complaint with the Department of Labor and Industry (Department) alleging discrimination in employment on the basis of physical disability. Following an informal investigation, the Department determined that a preponderance of the evidence did not support Horinek's allegations that Respondent Titan Machinery, discriminated against Horinek. The Department issued a Notice of Dismissal. Horinek filed an objection with the Montana Human Rights Commission (Commission). The Commission considered the matter on March 21, 2012. No oral argument was requested for this hearing.

The Commission reviews a decision of the Department to dismiss a complaint using an abuse of discretion standard. *Section 49-2-511(2), MCA*. After careful consideration, the Commission concludes the determination of the Department to dismiss the complaint in this case is not an abuse of discretion.

If a charging party chooses to commence a civil action in district court, the charging party has 90 days after the date this order is issued to file a complaint in district court, in the district where the alleged violation occurred, and seek appropriate relief. *Section 49-2-511(3)(a), MCA*. If a charging party fails to commence a civil action within 90 days, the claims are time barred. *Id.*

Alternatively, a party may ask a district court to review the decision of the Commission to affirm the dismissal of a complaint. *Sections 2-4-702 and 49-2-511(3)(b), MCA*. This review must be requested within 30 days of the date of this order.

IT IS HEREBY ORDERED, that Horinek's objection is **overruled**. The Commission affirms the determination of the Human Rights Bureau to dismiss the complaint against Titan Machinery.

DATED this 27th day of March 2012.

/lminich/  
L.M. Minich, Chair  
Human Rights Commission

### CERTIFICATE OF SERVICE

The undersigned secretary for the Human Rights Commission certifies that a true and correct copy of the foregoing ORDER was mailed to the following by U.S. Mail, postage prepaid, on this 27th day of March 2012.

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